

STATE OF MICHIGAN
COURT OF APPEALS

LUCINDA L. PORTER, Personal Representative
of the Estate of HOWARD J. PORTER; TARA L.
PORTER; KIMBERLY L. HUTKER, a/k/a
KIMBERLY L. MOORE; and MANDEE J.
PORTER,

UNPUBLISHED
September 28, 2004

Plaintiffs-Appellants,

v

CASEY ANDERSON, COLLEEN D. BLACK,
ABBEY L. FREDERICKSEN, GAIL P.
LAMKIN, JORDAN A. MASSELLI, and KATIE
SIMONSON,

No. 245366
Muskegon Circuit Court
LC No. 00-40503-NZ

Defendants-Appellees.

Before: Fort Hood , P.J., and Donofrio and Borrello, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting defendants' motions for summary disposition regarding plaintiffs' claims against defendants predicated on social host liability. We affirm.

On appeal, a trial court's decision on a motion for summary disposition is reviewed de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). Defendants' motion for summary disposition was brought pursuant to MCR 2.116(C)(10). A trial court "may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law." *Wilson v Alpena Road Comm*, ___ Mich App ___ (Docket No. 243357, July 22, 2004) In reviewing an order granting summary disposition under MCR 2.116(C)(10), a reviewing court examines all relevant documentary evidence in the light most favorable to the nonmoving party to determine whether a genuine issue of material fact exists on which reasonable minds could differ. *Id*.

This action arose from an incident in which Howard Porter, while working on the side of a road replacing a road sign in Muskegon, was fatally struck by a car after its driver lost control and slid off the road. Plaintiffs' social host liability claim arises from their allegation that during a party at a motel room, defendants furnished alcoholic beverages to Andrew Dodge, the

underaged driver of the vehicle, in violation of section 701 of the Michigan Liquor Control Act, MCL 436.1701(1). This statute states that a person who “knowingly sells or furnishes alcoholic liquor to a minor” is guilty of a misdemeanor. In *Longstreth v Gensel*, 423 Mich 675, 693; 377 NW2d 804 (1985), the Michigan Supreme Court held that a plaintiff may maintain a cause of action for social host liability under MCL 436.1701 (formerly MCL 436.33) because a violation of this statute raises a rebuttable presumption of negligence. Plaintiffs contend the term “furnishes” in the statute should be interpreted to impose liability on those persons who participate in an overall scheme to furnish alcohol to underage individuals. We disagree.

The only case plaintiffs cite in support of their argument regarding their desired interpretation of the term “furnishes” under the Michigan statute is the New York Court of Appeals decision, *Rust v Reyer*, 91 NY 2d 355; 693 NE2d 1074; 670 NYS2d 822 (1998). Plaintiffs fail to cite in their brief on appeal any Michigan case law interpreting the term “furnishes” as it is used in MCL 436.1701. This Court may decline to address a party’s argument where the issue is not properly presented for review or where the party has given cursory treatment to the issue with little or no citation to relevant supporting authority for an argument. *Goolsby v Detroit*, 419 Mich 651, 655 n 1; 358 NW2d 856 (1984).

But even if plaintiffs had properly presented this issue, we find that when viewing the evidence in a light most favorable to plaintiffs, no genuine issues of material fact exist regarding plaintiffs’ claim that defendants furnished alcohol to Dodge in violation of MCL 436.1701. This Court has established that determining whether a person has “furnished” alcoholic beverages to a minor under MCL 436.1701 “turns on the control over, or active participation in, supplying a minor with alcohol.” *Rodriguez v Solar of Michigan*, 191 Mich App 483, 495; 478 NW2d 914 (1991), citing *Christensen v Parrish*, 82 Mich App 409, 412; 266 NW2d 826 (1978); *Bambino v Dunn*, 166 Mich App 723, 732; 420 NW2d 866 (1988); *Reinert v Dolezel*, 147 Mich App 149, 155-156; 383 NW2d 148 (1985).

For example, in *Brown v Jones*, 200 Mich App 212; 503 NW2d 735 (1993), five defendants contributed one dollar towards the purchase of a bottle of schnapps that they consumed in an employee parking lot. *Id.* at 215. The plaintiff was injured when her automobile was struck by one of the defendants, who was traveling home from work. *Id.* This Court upheld the lower court’s grant of defendants’ motions for summary disposition because defendants, although contributing to a common fund for one bottle of liquor, had all purchased the alcohol for personal consumption. *Id.* Therefore, the Court found that the defendants had not furnished or given alcohol to themselves or the driver. *Id.*

Similarly, in the present case, defendants testified at their depositions that they contributed money to a common beer fund for their own personal consumption. In other words, the beer was not purchased for the purpose of furnishing it to others. Defendants also stated that there was a general understanding among the group that, similar to their previous gatherings together where alcohol was consumed, only those persons who had contributed money to the purchase of the alcohol would be able to consume it at the motel room. And although the driver claimed in his deposition that “someone” may have given him permission to drink beer at the party, he could not identify that person. Defendants denied ever giving him such permission.

Therefore, we find that there are no genuine issues of material fact regarding whether defendants furnished alcohol to a minor in violation of MCL 436.1701. The undisputed evidence

established that the preparations that defendants made in advance of the party were not done to make alcoholic beverages available for others to consume. Rather, each defendant who contributed to the beer fund did so in order to consume the beer themselves — not furnish it to others.

Affirmed.

/s/ Karen M. Fort Hood

/s/ Pat M. Donofrio

/s/ Stephen L. Borrello